



[Billing Code: 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Part 255

Guides Concerning the Use of Endorsements and Testimonials in Advertising

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) requests public comments on its Guides Concerning the Use of Endorsements and Testimonials in Advertising (“Endorsement Guides” or “Guides”). The Commission is soliciting the comments as part of its systematic review of all current Commission regulations and guides.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write “Endorsement Guides, P204500” on your comment, and file your comment online through <https://www.regulations.gov>. If you prefer to file your comment on paper, mail your comment to the following address:

Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION, CONTACT: Michael Ostheimer (202-326-2699),

mostheimer@ftc.gov, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

In December 1972, the Commission published for public comment proposed Guides Concerning the Use of Endorsements and Testimonials in Advertising, 37 FR 25548 (1972). Interested parties submitted extensive comments. On May 21, 1975, the Commission promulgated, under the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 41–58, three sections of the 1972 proposal as final guidelines (16 CFR 255.0, 255.3 and 255.4) and republished three others, in modified form, for additional public comment. 40 FR 22127 (1975). The Commission received public comment on the three re-proposed guidelines, as well as on one of the final guidelines. On January 18, 1980, the Commission promulgated three new sections as final guidelines (16 CFR 255.1, 255.2 and 255.5) and modified one example to one of the final guidelines adopted in May 1975 (16 CFR 255.0 Example 4). 45 FR 3870 (1980).

As part of its periodic regulatory review, the Commission sought public comment on the Endorsement Guides in January 2007. 72 FR 2214 (2007). In November 2008, the Commission discussed the comments it received in 2007, proposed certain revisions to the Guides, and requested comment on those proposed revisions. 73 FR 72374 (2008). In October 2009, the Commission substantively amended the Guides. 74 FR 53124 (2009).

The Guides are designed to assist businesses and others in conforming their endorsement and testimonial advertising practices to the requirements of Section 5 of the FTC Act. The Guides interpret laws the Commission administers, and thus are advisory

in nature. The Commission, however, can take action under the FTC Act if an endorsement or testimonial is inconsistent with the Guides. In any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive in violation of Section 5 of the FTC Act. The Guides define both endorsements and testimonials broadly to mean any advertising message that consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. 16 CFR 255.0(a) and (b).

The Guides state that endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. 16 CFR 255.1(a). Furthermore, endorsements may not contain any representations that would be deceptive, or could not be substantiated, if made directly by the advertiser. *Id.*

The Guides advise that an advertisement employing a consumer endorsement on a central or key attribute of a product will be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve. 16 CFR 255.2(a). If an advertiser does not have adequate substantiation that the endorser's experience is representative, the advertisement should contain a clear and conspicuous disclosure. *Id.*

The Guides define an expert endorser as someone who, as a result of experience, study or training, possesses knowledge of a particular subject that is superior to that generally acquired by ordinary individuals. 16 CFR 255.0(d). An expert endorser's qualifications must, in fact, give him or her the expertise that he or she is represented as possessing with respect to the endorsement. 16 CFR 255.3(a). Moreover, an expert endorsement must be supported by an actual exercise of expertise, and the expert's evaluation of the product must have been at least as extensive as someone with the same

degree of expertise would normally need to conduct in order to support the conclusions presented. 16 CFR 255.3(b).

Among other things, the Guides also state that: (1) advertisements presenting endorsements by what are represented to be actual consumers should utilize actual consumers, or clearly and conspicuously disclose that the persons are not actual consumers, 16 CFR 255.2(c); (2) an organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization, 16 CFR 255.4; and (3) when there is a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be fully disclosed, 16 CFR 255.5.

II. Regulatory Review Program

The Commission periodically reviews all Commission rules and guides. These reviews seek information about the costs and benefits of the Commission's rules and guides and their economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of and the continuing need for its Endorsement Guides; possible conflict between the Guides and state, local, federal, or international laws; and the effect of any technological, economic, environmental, or other industry changes on the Guides.

III. Request for Comment

The Commission is particularly interested in comments and supporting data on the following questions. These questions are designed to assist the public and should not

be construed as a limitation on the issues on which public comment may be submitted. In their replies to each of these questions, commenters should provide any available evidence and data, such as empirical data, consumer perception studies, or consumer complaints, that support the commenter's asserted position.

- (1) Is there a continuing need for the Endorsement Guides as currently promulgated?
- (2) Are any specific provisions of the Guides no longer necessary, and, if so, which provisions and why are they no longer necessary?
- (3) Are the deceptive or unfair practices addressed by the Guides prevalent in the marketplace? Are the Guides effective in addressing those practices? Are there deceptive or unfair practices involving endorsements that are not covered by the Guides? Are there alternatives, such as individual enforcement actions under the FTC Act, which would be more effective or equally effective in addressing those practices? Do the Endorsement Guides describe any practices that are not deceptive or unfair, and if so, which practices and why are they not deceptive or unfair?
- (4) What is the degree of compliance with the Endorsement Guides? What effect, if any, does this have on the continuing need for the Guides? Do covered businesses and others following the Guides' suggestions self-regulate or have voluntary standards or guidance, such as through trade associations, that overlap with the Guides? If so, to what extent, if any, do the Guides support industry self-regulation or voluntary standards?
- (5) What benefits, if any, have the Endorsement Guides provided to consumers?

Do the Guides impose any significant costs on consumers?

- (6) What impact, if any, have the Guides had on the flow of truthful or deceptive information to consumers?
- (7) What changes, if any, should be made to the Endorsement Guides to increase their benefits to consumers? How would these changes affect consumer benefits or business costs?
- (8) What burdens or costs, including costs of compliance, have the Guides imposed on businesses? What burdens or costs have the Guides imposed on small businesses in particular? What burdens or costs have the Guides imposed on endorsers? What benefits have the Guides provided to businesses? What benefits have the Guides provided to endorsers?
- (9) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on businesses or endorsers? How would these changes affect the benefits provided by the Guides to consumers, businesses, and endorsers?
- (10) Do the Guides overlap or conflict with federal, state, or local laws or regulations? Do the Guides overlap or conflict with any international laws or regulations?
- (11) Have consumer perceptions regarding endorsements changed since the Guides were last revised and, if so, do these changes warrant revising the Guides?
- (12) What modifications to the Guides, if any, should be made to address technological, economic, or environmental changes that have occurred since

the Guides were last revised?

- (13) FTC staff periodically updates a business guidance document, “The FTC’s Endorsement Guides: What People Are Asking.” Is there guidance in the current version of that document that should be incorporated into the Guides? If so, what and why? Is there guidance in the current version of that document that should not be incorporated into the Guides? If so, what and why?
- (14) How well are advertisers and endorsers disclosing unexpected material connections on social media platforms? Does this depend on the type of material connection? What disclosures of material connections are sufficiently clear (i.e., understandable) to consumers when used in social media? What disclosures of material connection currently being used in social media are likely not understood by consumers? Does the sufficiency or insufficiency vary by platform, type of material connection (e.g., a paid post versus a free product), or other factors, and, if so, how? To the extent that these connections are not being adequately disclosed, do the problems tend to be in the substance of the disclosures or in their conspicuousness (e.g., placement, visibility, or audibility)? Should the Guides provide more detail on what disclosures of material connections are sufficiently clear or unclear in different social media formats? Does the fact that Commission Guides are generally reviewed every ten years affect your answer as to whether providing more detail would be helpful?
- (15) The FTC has received complaints that young children may not adequately

understand disclosures of material connections. To what extent would knowledge of a material connection affect the weight or credibility that young children give to an endorsement? At what age are children capable of making a connection between credibility and a material connection? Does this age differ from the age at which children are capable of identifying advertising? Why or why not and, if so, how? To what extent do young children understand disclosures of material connections? What should advertisers and endorsers appealing to young children know about their intended audience's understanding of a particular endorsement, advertising format, or disclosure? How can disclosures of material connections in media consumed by young children be made clearer or more effective? How, if at all, are your answers to the above questions impacted by parental involvement in the media consumption of young children? What disclosures of material connections should advertisers and endorsers appealing to young children provide to parents?

- (16) Some marketers give incentives (e.g., free or discounted products) to consumers in exchange for posting reviews of their products or services without specifically requiring that the reviews be favorable. Do such incentives skew or bias the resulting reviews? Why or why not? If so, how and to what extent do incentives skew or bias the resulting reviews, and what factors may make such impacts more or less likely? Should such incentives be disclosed? Why or why not and if so, how? Does the nature or value of the incentive matter? If so, how? Do such incentives skew

composite ratings? Why or why not and if so, how? Do such incentives impact the order in which products or services are presented to consumers on retail or other review platforms? Why or why not and if so, how?

- (17) Some consumer reviewers who receive incentives in exchange for their reviews disclose their material connections in their reviews. Are such disclosures adequate when incentivized reviews are included in composite ratings? Why or why not? Are composite ratings that are based in whole or in part on such incentivized reviews misleading? If such composite ratings are misleading: (1) are there disclosures that could adequately address this concern and if so, what disclosures; and (2) how should the Guides address composite ratings if disclosures are not sufficient or there is not an opportunity for the marketer to make adequate disclosures (e.g., when the reviews and composite ratings appear on a third party's website)?
- (18) Some marketers actively solicit customer feedback and send satisfied customers down one path to relevant review sites and send customers with negative sentiment down another path, sometimes into some sort of customer service resolution process. What are the costs and benefits of this practice? Should it be addressed in the Guides and, if so, how?
- (19) Some advertisers contend that consumers who use social media understand that influencers who promote products are generally doing so only because they are paid or given something by the marketer, regardless of what or whether disclosures appear in social media posts. What evidence is there to support or contradict this assertion and does the answer differ depending on

the nature of the material connection? In particular cases, what factors might be considered to determine whether a material connection is unexpected? Do consumer expectations vary by the age of the audience, the product category, the nature of the influencer, the format or substance of the endorsement, or otherwise, and if so, how?

- (20) Some endorsers (including the authors of some product reviews) include affiliate links that can be used to purchase the products they are endorsing. Should the Guides address such links, and if so, how? To what extent do consumers expect that these endorsers are compensated for purchases through those links? If so, what compensation arrangements do consumers ordinarily expect? To what extent would knowing of such compensation affect the weight or credibility given to those endorsements? Is there a distinction in terms of either consumer expectations or the weight ascribed to an endorsement between affiliate links to a product's marketer and affiliate links to one or more retailers? If so, how, why, and how should that be addressed?
- (21) What disclosures, if any, do advertisers or the operators of review websites or review platforms need to make about the creation, collection, processing, or publication of reviews or ratings in order to prevent those reviews or ratings from being deceptive or unfair?
- (22) What other fact patterns or scenarios should be addressed by the Guides and why?

You can file a comment online or on paper. For the Commission to consider your

comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Endorsement Guides, P204500” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through <https://www.regulations.gov>, by following the instruction on the web-based form.

If you file your comment on paper, write “Endorsement Guides, P204500” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as your or anyone’s Social Security number; date of birth; driver’s license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for ensuring your comment does not include any sensitive health information, such as medical records or other

individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential” – as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov* – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this request for comment and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including

routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020-03447 Filed: 2/20/2020 8:45 am; Publication Date: 2/21/2020]